The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, March 14, 2011
TIME: 10:15 a.m.—12:15 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Dockery, Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 830** Thrasher (Identical H 1021)	Labor and Employment; Prohibits a state agency from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity. Prohibits a county, municipality, or other local governmental entity from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity, etc. CA 03/07/2011 CA 03/14/2011 GO BC	
	At 11:30 a.m. or upon completion of the above-referenced bill, whichever occurs first, the committee will hear the following bills.		
2	**SB 994** Latvala (Identical H 913)	Public Records/Public Airports; Provides definitions. Provides an exemption from public records requirements for proprietary confidential business information submitted to or held by a public airport and for any proposal or counterproposal exchanged between the governing body of a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities. Provides for exceptions to the exemptions. Provides for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act. Provides a finding of public necessity. CA 03/14/2011 CM GO	
3	**SB 510** Latvala (Identical H 535)	Hurricane Loss Mitigation Program; Extends the repeal date of the program. Deletes an obsolete provision relating to the use of funds for programs to retrofit certain existing facilities. CA 03/14/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 582** Detert (Identical H 311)	Local Business Taxes; Exempts an individual engaging in or managing a business in an individual capacity as an employee from requirements related to local business taxes. Prohibits a local governing authority from holding an exempt employee liable for the failure of a principal or employer to comply with certain obligations related to a local business tax or requiring an exempt employee to take certain actions related to a local business tax, etc. CA 03/14/2011 RI BC	
5	**SJR 658** Fasano (Compare HJR 273, CS/HJR 381, HJR 537, H 1053, H 1163, SJR 210, SJR 390, SJR 1578, Link S 1564, S 1722)	Homestead/Nonhomestead Property; Proposes amendments to the State Constitution to prohibit increases in the assessed value of homestead property if the fair market value of the property decreases, reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for owners of homestead property who have not owned homestead property for a specified time before purchase of the current homestead property, etc. CA 03/14/2011 JU BC RC	
6	**SB 1144** Margolis (Identical H 767)	Local Government; Authorizes a board of county commissioners to negotiate the lease of certain real property for a limited period. Authorizes transfers of right-of-way between local governments by deed. CA 03/14/2011 JU TR	
7	**SB 634** Simmons (Identical H 4181)	Citizens Property Ins. Corp./Prohibited Activities; Repeals a provision relating to an obsolete prohibition against Citizens Property Insurance Corporation's use of certain amendments or transfers of funds for rate or assessment increase purposes. BI 02/22/2011 Favorable CA 03/14/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 638** Simmons (Identical H 4129)	Residential Property/Evaluation Grant Program; Deletes an obsolete Citizens Property Insurance Corporation residential property structural soundness evaluation grant program. BI 02/22/2011 Favorable CA 03/14/2011 BC	
9	**A proposed committee substitute** combining the following 2 bills (SB 800, SB 836) is available:		
	SB 800 Diaz de la Portilla (Similar S 836, Identical H 157)	Education/Training Opportunities/Public Employees; Provides certain educational opportunities for specified local government employees. Authorizes the use of fee waivers for specified local government employees. CA 03/14/2011 HE BC	
	SB 836 Margolis (Similar H 157, S 800)	Education/Training Opportunities Public Employees; Provides certain educational opportunities for specified local government employees. Authorizes the use of fee waivers for specified local government employees. CA 03/14/2011 HE BC	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 830
INTRODUCER:	Senator Thrasher
SUBJECT:	Labor and Employment
DATE:	February 24, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill prohibits employee organizations from deducting dues, uniform assessments, fines, penalties, or special assessments from public employee wages. The bill allows for a pro rata refund for moneys paid by a public or private employee to a union for political contributions and expenditures. It also prohibits labor organizations from requiring an authorization to spend funds for political contributions and expenditures as a condition to membership.

This bill substantially amends the following sections of the Florida Statutes: 110.114, 112.171, 447.303, and 447.507.

The bill creates section 447.18 of the Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a "right to work" state. Article I, section 6 of the Florida Constitution reads:

> The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.[1] Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.[2]

Certain restrictions may be placed on a union's ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.[3] In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions' judicially created duty of fair representation and nonunion members' First Amendment rights.[4] The Supreme Court has held that a local government's restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.[5] In a more recent case, the Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.[6] The Court held that the state was under no obligation to aid unions in their political activities, and the state's decision not to do so was not abridgement of unions' free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state's support.[7]

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935[8] and the Federal Labor Management Relations Act of 1947[9] constitute a comprehensive scheme of regulations guaranteeing to employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. When conduct falls within the scope of the NLRA, the preemption doctrine applies and the state statutes are usually inoperative, unless the National Labor Relations Board has declined jurisdiction or has ceded jurisdiction to a state labor-relations board, or unless the conduct involves an area that the states are permitted to regulate despite the existence of the NLRA.[10] However, when the subject matter of a labor relations dispute or regulatory issue

[1] *See Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff'd* 723 F.2d 918 (11th Cir. 1983).
[2] *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd*., 840 So. 2d 1103 (Fla. 1st DCA 2003).
[3] *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass'n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff'd on other grounds*, 375 U.S. 96 (1963); AFSCME Local 3032 v. Delaney, 458 So. 2d 372 (Fla. 1st DCA 1984).
[4] *Commc'ns Workers of Am. v. Beck*, 487 U.S. 735 (1988).
[5] *Charlotte v. Local 660, Int'l Assoc. of Firefighters*, 426 U.S. 283 (1976).
[6] *Ysursa v. Pocatello Education Assoc*, 129 S.Ct. 1093 (2009).
[7] *Id.*
[8] 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).
[9] 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).
[10] Am. Jur. 2d, Labor and Labor Relations § 516.

touches overriding state or local interests, and in the absence of compelling congressional direction, state laws are not preempted by the National Labor Relations Act.[11] Other federal labor-relations statutes that can preempt state action include the Labor-Management Reporting and Disclosure Act[12] and the Railway Labor Act.

Florida Statutes

Under the Florida Statutes, employees have the right to form, join, or assist labor unions or labor organizations, or to refrain from such activity.[13] The rights given by these provisions belong to the individual employee and not to the union.[14] The regulation of labor unions is the responsibility of the Department of Business and Professional Regulation.[15]

Part II of chapter 447, F.S., governs labor organizations for public employees, and the Public Employees Relations Commission regulates collective bargaining in Florida. Part II of chapter 447, F.S., has two basic purposes:

- to encourage cooperation between government and its employees and
- to protect the public from the interruption of government services resulting from strikes by government employees.

Under current law, any employee organization which has been certified as a bargaining agent[16] has the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.[17] However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. The deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked by a court due to a violation on the prohibition on strikes, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.[18]

"Employee organization" or "organization" means any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees

[11] 34 Fla. Jur 2d Labor and Labor Relations § 8.
[12] 29 U.S.C. §§ 401 to 531.
[13] Section 447.03, F.S.
[14] *Miami Laundry Co. v. Laundry, Linen, Dry Cleaning Drivers, Salesmen & Helpers, Local Union No*. 935, 41 So. 2d 305 (Fla. 1949).
[15] Section 447.02(3), F.S.
[16] Section 447.203, F.S. ("Bargaining agent" means the employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit or its representative.) For more information about this process and Florida Labor Law in general, *see* PUBLIC EMPLOYEES RELATIONS COMMISSION, A PRACTICAL HANDBOOK ON FLORIDA'S PUBLIC EMPLOYMENT COLLECTIVE BARGAINING LAW (2004) *available at* http://perc.myflorida.com/pubs/pubs.aspx (last visited March 03, 2011).
[17] Section 447.303, F.S.
[18] Section 447.303, F.S.

concerning any matters relating to their employment relationship with a public employer.[19] An employee organization is a type of labor organization.[20]

Counties, municipalities, and special districts as well as state departments, agencies, bureaus, commissions, and officers are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as is authorized and requested by such employee or employees and for such purpose as is authorized and requested by such persons and pay such sums so deducted as directed by such persons.[21]

Political Contributions

For purposes of campaign financing:
A "contribution" is defined as:

- A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.
- A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combination of these groups.
- The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.[22]

An "expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. There is an exception for internal newsletters.[23]

III. Effect of Proposed Changes:

Section 1 amends s. 110.114, F.S., to prohibit state employee wage deductions for the dues, uniform assessments, penalties, or special assessments of an employee organization. It further prohibits deductions for purposes of political activity, including contributions to a candidate, political party, political committee, committee of continuous existence,[24] electioneering

[19] Section 447.203(11), F.S.
[20] Section 447.02, F.S.
[21] Section 110.114 and 112.171, F.S.
[22] Section 106.011, F.S.
[23] Section 106.011, F.S.
[24] Section 106.011, F.S. defines "committee of continuous existence" to mean any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04, F.S.

communications organization, or organization exempt from taxation under 501(c)(4)[25] or s. 527[26] of the Internal Revenue Code. The bill deletes the explicit authorization allowing "employee organizations" that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

Section 2 amends s. 112.171, F.S., to provide the same prohibitions in section 1 but for county, municipal, and special district employees.

Section 3 creates s. 447.18, F.S., to state that unless an employee has executed a written authorization, the employee is entitled to a pro rata refund of any money the employee paid to the union that was spent on political contributions or expenditures (see present situation section for the definitions of "contributions" or "expenditures").[27] The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied with a detailed account, provided by the labor organization, of all political contributions and expenditures made by the labor organization in the preceding 24 months. The employee may revoke the authorization at any time. If an employee revokes the authorization, the pro rata refund of the employee for such fiscal year shall be in the same proportion as the proportion of the fiscal year for which the authorization was not in effect. A labor organization may not require an employee to provide the authorization for political contributions and expenditures as a condition of membership in the labor organization.

Section 4 amends s. 447.303, F.S., to prohibit public employers from deducting or collecting money from their employees for an employee organization.

The bill deletes language that:

- Authorizes a bargaining agent to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.
- Allows the employee to revoke authorization for employer deduction with 30 days' written notice.
- Specifies that reasonable costs to the employer of deductions are a proper subject of collective bargaining.
- Specifies procedures regarding the deduction and revocation process.
- Prohibits the public employer from any involvement in the collection of fines, penalties, or special assessments.

Section 5 amends s. 447.507, F.S., deleting references to deductions or check-offs by employee organizations with respect to penalties for violation of the strike prohibition.

Section 6 states that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

[25] 26 U.S.C. § 501(c)(4) (Relating to Civic Leagues, Social Welfare Organizations, and Local Associations of Employees).
[26] 26 U.S.C. § 527 (Relating to tax exempt political organizations).
[27] Section 106.011, F.S.

Section 7 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Impairment of Contracts: This bill provides for a refund for certain employee dues, assessments, fines, or penalties unless the employee has executed a written authorization. The written authorization must be executed by the employee separately for each fiscal year. The bill also allows employees to revoke their authorization at any time. As a result, impairment of contract claims may arise.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[28] "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[29] If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[30] The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- whether the law was enacted to deal with a broad, generalized economic or social problem;
- whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.[31]

[28] U.S. Const. Art. I, § 10; Art. I, s. 10, Fla. Const.
[29] *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979). *See also General Motors Corp. v. Romein*, 503 U.S. 181 (1992).
[30] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County, 412 So 2d 395* (Fla. 3rd DCA 1982). *See also Exxon Corp. v Eagerton*, 462 U.S. 176 (1983) (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public's health, safety, or welfare. *See Khoury v. Carvel Homes South, Inc*., 403 So2d 1043 (Fla. 1st DCA 1981).
[31] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979).

To the extent that there are existing contracts that:

- do not include a written authorization as required by the bill;
- extend beyond a given fiscal year; or
- are not revocable by the employee at any time

The bill may raise impairment of contracts issues. A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

For other constitutional issues, see the present situation section.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employee organizations are likely to have more difficulty collecting dues, fees, assessments and penalties from public employees. Labor organizations are likely to have more difficulty collecting funds from employees for political purposes.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If an employee can get a pro rata refund with a written authorization (because it is freely revocable) or without one, the written authorization itself appears to have little effect, other than assisting the employee to make an informed decision regarding whether they want their moneys used for political purposes.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/08/2011	.	
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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 87 - 104
and insert:
447.18 Written authorization required to expend certain employee dues, assessments, fines, or penalties.-
(1) A labor organization may not use dues, uniform assessments, fines, penalties, or special assessments paid by an employee to make contributions or expenditures, as defined in s. 106.011, without the express written authorization of the employee. The written authorization must be executed by the employee separately for each fiscal year of the labor

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organization and shall be accompanied with a detailed account, provided by the labor organization, of all contributions and expenditures made by the labor organization in the preceding 24 months. The labor organization shall estimate its expected contributions and expenditures for the fiscal year and shall reduce the amount collected during the fiscal year from each employee that has not executed a written authorization. If the actual contributions and expenditures of the labor organization exceed its estimated contributions and expenditures, the labor organization shall provide a refund at the end of the fiscal year to each employee that has not executed a written authorization.

(2) The employee may revoke the authorization described in subsection (1) at any time. If an employee revokes the authorization, the employee shall be entitled to a pro rata reduction of such dues, uniform assessments, fines, penalties, or special assessments for the remainder of the fiscal year of the labor organization. The amount of the reduction shall be based upon the proportion of the contributions and expenditures, as defined in s. 106.011, in relation to the total annual contributions and expenditures of the labor organization for the preceding fiscal year.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 13 - 18

and insert:

creating s. 447.18, F.S.; prohibiting labor organizations from collecting dues, assessments,

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fines, or penalties without written authorization; providing for a refund to employees that have not given a written authorization in certain situations; requiring that the labor organization

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/08/2011	.	
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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete line 180
and insert:
Section 7. This act shall take effect July 1, 2011 and apply to all collective bargaining agreements entered into after that date.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 31
and insert:

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effective date and applying prospectively to collective bargaining agreements.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 994
INTRODUCER:	Senator Latvala
SUBJECT:	Public Records/Public Airports
DATE:	March 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			CM	
3.			GO	
4.				
5.				
6.				

I. Summary:

This bill makes proprietary confidential business information submitted to or held by a public airport confidential and exempt from public records requirements.

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.[1] The bill contains a statement of public necessity.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.[2]

This bill creates section 332.16 of the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, of the State Constitution, provides that:

[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record[3] must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency[4] records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public records" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."[5]

Only the Legislature is authorized to create exemptions to open government requirements.[6] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[7] A bill enacting an exemption[8] may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.[9]

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or

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[3] Section 119.011(12), F.S.

[4] Section 119.011(2), F.S., defines "agency" as "…any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[5] *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

[6] Article I, s. 24(c) of the State Constitution.

[7] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

[8] Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[9] Section 24(c), Art. I of the State Constitution.

entities designated in the statute.[10] If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[11]

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Public Records Exemptions

Proprietary confidential business information under various definitions is confidential and exempt from s. 119.07, F.S., as it relates to the following:

- Alternative investments for state funds (s. 215.44, F.S.)
- Institute for Commercialization of Public Research (s. 288.9626, F.S.)
- Communications services tax (s. 202.195, F.S.)
- Economic development agencies (s. 288.075, F.S.)
- Electric utility interlocal agreements (s. 163.01, F.S.)
- Emergency communications number E911 system (s. 365.174, F.S.)
- H. Lee Mofitt Cancer Center and Research Institute (s. 1004.43, F.S.)
- Natural gas transmission companies (s. 368.108, F.S.)
- Opportunity Fund (s. 288.9626, F.S.)
- Prison work program corporation records (s. 946.517, F.S.)
- Public utilities (s. 366.093, F.S.)
- Sunshine State One-Call of Florida, Inc. (s. 556.113, F.S. – exempt only, not confidential and exempt)
- Telephone companies (s. 364.183, F.S.)
- Tobacco companies (s. 569.215, F.S.)
- Water and wastewater systems (s. 367.156, F.S.)

There is currently no public records exemption for proprietary confidential business information submitted to or held by an airport.

III. Effect of Proposed Changes:

Section 1 creates s. 332.16, F.S., to make proprietary confidential business information submitted to or held by a public airport confidential and exempt from public records requirements, until it is no longer considered to be proprietary confidential business information by the proprietor.

[10] Op. Att'y Gen. Fla. 85-62 (1985).
[11] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).

The bill defines:

- "Airport facilities" to mean airports, buildings, structures, terminal buildings, parking garages and lots, hangars, land, warehouses, shops, hotels, other aviation facilities of any kind or nature, or any other facility of any kind or nature related to or connected with a public airport and other aviation facility that a public airport is authorized by law to construct, acquire, own, lease, or operate, together with all fixtures, equipment, and property, real or personal, tangible or intangible, necessary, appurtenant, or incidental thereto.
- "Governing body" means the board or body in which the general legislative powers of a public airport are vested.
- "Proprietor" means a self-employed individual, proprietorship, corporation, partnership, limited partnership, firm, enterprise, franchise, association, trust, or business entity, whether fictitiously named or not, authorized to do or doing business in this state, including its respective authorized officer, employee, agent, or successor in interest, which controls or owns the proprietary confidential business information provided to a public airport.
- "Proprietary confidential business information" means information that has been designated as confidential by the proprietor and includes:
  - Business plans;
  - Internal auditing controls and reports of internal auditors;
  - Reports of external auditors for privately held companies;
  - Trade secrets as defined in s. 688.002, F.S.;[12]
  - Client and customer lists;
  - Potentially patentable material;
  - Business transactions; or
  - Financial information of the proprietor or projections of financial results for the proprietor or the airport facilities project for which the information is provided.
- "Public airport" has the same meaning as provided in s. 330.27, F.S.,[13] and includes areas defined in s. 332.01(3), F.S.[14]

In addition, a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities is confidential and exempt from public records requirements until ten days after the proposal is approved by the public airport. If no proposal or counterproposal is submitted to the governing body of the public airport for approval, such proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

[12] "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[13] "Airport" means an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use.

[14] "Airport" means any area, of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving and discharging passengers or cargo, and all appurtenant areas used or suitable for access to airport facilities, airport buildings, or other airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter established.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates an undesignated section of law providing a statement of Legislative intent supporting the constitutionally required public necessity statement. Essentially, divulging the proprietary confidential business information destroys the value of that property to the proprietor, causing a financial loss not only to the proprietor, but also to the airport and to the state and local governments due to a loss of tax revenue and employment opportunities for residents. Release of that information gives business competitors an unfair advantage and would injure the affected entity in the marketplace. Therefore, the Legislature provides a statement of public necessity that proprietary confidential business information that is received or held by a public airport be made confidential and exempt from public-records requirements.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement: Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Subject Requirement: Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

Public Necessity Statement: Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.[15] This bill applies to all information designated as confidential by the proprietor. To survive constitutional scrutiny, the bill must be narrowly tailored to alleviate concerns about disclosure of proprietary confidential business information resulting in lost value to airports and local governments.

C. Trust Funds Restrictions:

None.

[15] *Memorial Hospital-West Volusia v. News-Journal Corporation,* 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation,* 724 So. 2d 567 (Fla. 1999).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could result in a cost savings to public airports.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 510
INTRODUCER:	Senator Latvala
SUBJECT:	Hurricane Loss Mitigation Program
DATE:	February 25, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill extends the repeal date of the Hurricane Loss Mitigation Program to June 30, 2021, and deletes obsolete provisions.

This bill substantially amends section 215.559, of the Florida Statutes.

II. Present Situation:

Hurricane Loss Mitigation Program

The Florida Legislature passed the Bill Williams Residential Safety and Preparedness Act, creating the Hurricane Loss Mitigation Program in 1999. Located in s. 215.559, F.S., the Hurricane Loss Mitigation Program receives an annual appropriation of $10 million from the Florida Hurricane Catastrophe Fund which is submitted to the Division of Emergency Management within the Department of Community Affairs for administration of purposes specified in this section. "Section 215.559, F.S., provides minimum funding levels for specific areas and creates an Advisory Council to make recommendations on developing programs".[1]

Of the $10 million dollars that are allocated by the Legislature, $7 million must be used to improve wind resistance of residences and mobile homes, through loans, subsidies, grants, demonstration projects and direct assistance, educate individuals on Florida Building Code cooperative programs, and provide other efforts to prevent or reduce losses or the cost of

[1] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program, 2010 Annual Report*, at 5 (Dec. 27, 2010) (on file with the Senate Committee on Community Affairs).

rebuilding after a disaster. The remaining $3 million must be used to retrofit existing facilities used as public hurricane shelters.[2]

Of the $7 million that is allocated to improve wind resistance and prevent or reduce losses after a disaster:

- 40% must be used to inspect and improve tie-downs for mobile homes, through grants under the Manufactured Housing and Mobile Home Mitigation Enhancement Program at Tallahassee Community College;[3]
- 10% must be allocated to the Florida International University Type I Center that is dedicated to hurricane research; and[4]
- 50 % is allocated to directed programs developed by the Division of Emergency Management within the Department of Community Affairs with the advice from the statutorily created Residential Construction Mitigation Program (RCMP) Advisory Council.[5]

The statutorily created RCMP Advisory Council provides project recommendations, selection criteria and guiding principles to administer the Hurricane Loss Mitigation Program. The RCMP Advisory Council meets at least once during the state fiscal year to review current year projects and prepare recommendations for projects that may be eligible for funding during the next fiscal year.[6] Subsection (5) of s. 215.559, F.S., provides that the advisory council shall consist of:

- A representative designated by the Chief Financial Officer,
- A representative designated by the Florida Home Builders Association,
- A representative designated by the Florida Insurance Council,
- A representative designated by the Federal of Manufactured Home Owners,
- A representative designated by the Florida Association of Counties, and
- A representative designated by the Florida Manufactured Housing Association.

Subsection (7), of s. 215.559, F.S., requires the Department of Community Affairs to provide a full report along with an accounting and evaluation of activities conducted under this section to the Speaker of the House of Representatives, the President of the Senate, and the majority and Minority Leaders of the House of Representatives and the Senate on January 1 of each year.[7]

The 2010 Annual Report indicated that a total of $2,467,389 was advertised in the Notice of Funding Availability (NOFA) for RCMP competitive funding for the 2010-2011 State Fiscal Year, of which 17 projects were recommended for funding.[8] According to the 2010 report, the following amounts were awarded for the 2010-2011 fiscal year at this point in time:

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[2] Section 215.559(2)(a)-(b), F.S. For more information on the shelter retrofit program, visit the following website http://www.floridadisaster.org/Response/engineers/index.htm (last visited on Feb. 25, 2011).
[3] Section 215.559(3), F.S.
[4] Section 215.559(4), F.S.
[5] Florida Division of Emergency Management, *supra* note 1, at 2. *See also* s. 215.559(5), F.S.
[6] *Id.* at 23.
[7] A copy of the 2010 Annual Report is on file with the Senate Committee on Community Affairs.
[8] *Id.* at 16.

Amount Awarded: State Fiscal Year 2010-2011	
Shelter Retrofit Program	$3,000,000.00
Residential Construction Program Retrofits	$822,176.00
Mitigation Planning	$318,719.00
Public Outreach	$297.972.00
Manufactured Homes (tie-down retrofit)	$2,800,000.00
Hurricane Mitigation Research	$700,000.00
TOTAL AWARD AMOUNT	$7,938,867.00

[9]

Subsection (8), of s. 215.559, F.S., currently allows $3 million appropriated to retrofit existing facilities used as public hurricane shutters, to be used for hurricane shelters during the 2010-2011 fiscal year only.

Under current law, the Hurricane Loss Mitigation Program is set to be repealed on June 30, 2011.

III. Effect of Proposed Changes:

Section 1 extends the repeal date of the Hurricane Loss Mitigation Program to June 30, 2021. Under current law this program was set to expire and be repealed on June 30, 2011. This section also deletes obsolete provisions in current subsection (8) which allowed the use of program funds for the 2010-2011 fiscal year only, to be used for hurricane shelters.

Section 2 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[9] *Id.* at 28-29. The report indicated that additional projects will be awarded for the 2010-2011 fiscal year through the RFP process and has yet to be allocated.

B. Private Sector Impact:

As a result of this bill, projects and individuals will be eligible to apply for assistance under the Hurricane Loss Mitigation Program until it is repealed on June 30, 2021.

C. Government Sector Impact:

The $10 million appropriated from the Florida Catastrophe Fund to the Hurricane Loss Mitigation Program every year, helps maintain the tax exempt status of Florida's Catastrophe Fund. The value of the federal tax exemption is approximately $455 million, should the Hurricane Loss Mitigation Program be repealed on June 30, 2011, *and* the $10 million is no longer spent on mitigation projects, then the tax exemption may be in jeopardy.[10]

As a result of this bill, the Hurricane Loss Mitigation Program, under the Department of Community Affairs, and any concurrent benefits thereof, will continue to exist until it is repealed on June 30, 2021.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[10] Conversation with Leonard Schulte, Director of Legal Analysis & Risk Evaluation at Florida Hurricane Catastrophe Fund (March 10, 2011). *See also* Fla. H.R. Comm. on Insurance, HB 719 (1995) Staff Analysis (one file with the Senate Committee on Community Affairs).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 582
INTRODUCER:	Senator Detert
SUBJECT:	Local Business Taxes
DATE:	March 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			RI	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill specifies that an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

The bill removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

For purposes of the application of the provisions relating to local business taxes, the bill specifies that an employee does not include an independent contractor. The bill specifies that "independent contractor" means an entity which satisfies at least 4 of the 6 statutorily listed criteria which are created in the bill. Additionally, the bill further specifies that if at least 4 of the 6 criteria are not met, an individual may still be presumed to be an independent contractor and not an employee based on consideration of 7 specified work conditions created in the bill.

This bill substantially amends the following sections of the Florida Statutes: 205.022 and 205.194.

This bill creates s. 205.066 of the Florida Statutes.

II. Present Situation:

In 1972, the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the "Local Occupational License Act."[1]

In 2006, 368 of the 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place.[2] Although the local occupational license tax was designed to be purely revenue producing in nature, it had unintentionally become a measure of profession and business qualification to engage in a specified activity.[3] Chapter 2006-152, L.O.F., renamed the act as the "Local Business Tax Act" to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.[4] The legislation removed the term "occupational license" and added the terms "local business tax" and "local business tax receipt."

Based on financial data contained in Annual Financial Reports (AFR) submitted by local governments to the Department of Financial Services, 35 counties reported local business tax revenues totaling $31.8 million and 265 municipalities reported local business tax revenues totaling $117.8 million in LFY 2008-09.[5]

Currently, "local business tax" means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.[6] It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.[7] Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of chapter 205, F.S.[8]

"Business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state.[9]

Under current law, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.[10] The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the

[1] FLORIDA REVENUE ESTIMATING CONFERENCE, 2010 FLORIDA TAX HANDBOOK at 227.
[2] 2006 bill analysis on HB 1269 (chapter 2006-152, L.O.F.) by the House Fiscal Council, dated 4/21/2006, and citing data provided by the Legislative Committee on Intergovernmental Relations.
[3] *Id*.
[4] *Id*.
[5] Office OF ECONOMIC AND DEMOGRAPHIC RESEARCH, LOCAL BUSINESS TAX, *available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm.
[6] Section 205.022(5), F.S.
[7] *Id*.
[8] *Id*.
[9] Section 205.022(1), F.S.
[10] Sections 205.032 and 205.042, F.S.

limitations of ch. 205, F.S. However, a Florida county or municipality may not levy a business tax if any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation (DBPR) has paid a business tax for the current year to the county or municipality in the state where the company's permanent business location or branch office is maintained.[11]

Section 205.194, F.S., prohibits local governments from imposing a "local business tax" for professions regulated by the DBPR without the local government verifying that the person has satisfied the DBPR qualification requirements. Applicants are required to submit proof of registration, certification, or licensure issued by the DBPR upon initial licensure in the local jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of their state license, certification, or registration.

Several other sections of ch. 205, F.S., require additional verification from state regulatory agencies, such as the Department of Agriculture and Consumer Services and the Agency for Health Care Administration, before a local government may issue a business tax receipt.

Attorney General Opinion 2010-41

In 2010, the attorney general was asked to provide an opinion on, among other things, the following questions:

- Must a municipality impose a local business tax on professionals licensed by the state if such professionals are employed by another person or entity?
- May a municipality amend its local business tax ordinance … to exempt state-licensed professionals employed by another?

On October 13, 2010, the attorney general issued AGO 2010-41. It provides in pertinent part that:

- A municipality must impose a business tax on all businesses, professions, or occupations within its jurisdiction when adopting a tax pursuant to section 205.042, Florida Statutes, and exempt only those businesses, professions, or occupations addressed [exempted or allowed to be exempted] in Chapter 205.
- For the purposes of the statute, a "person" means "any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular." Thus, the local business tax law applies to and operates on any person, engaged in any business, profession, or occupation who exercises the taxable privilege within a municipality's jurisdiction and is not excepted or exempted from the license tax by the terms of Chapter 205, Florida Statutes, or other applicable general law.

[11] Section 205.065, F.S.

- A city may apply only the exemptions set forth in Chapter 205, Florida Statutes, to exclude individuals or entities from its local business tax.

There is no exemption in chapter 205, F.S., for individuals who are employees of another person.

III. Effect of Proposed Changes:

Section 1 amends s. 205.022, F.S., to create a definition for "independent contractor." An independent contractor is a person who meets **at least four** of the following criteria:

- The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;
- The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;
- The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;
- The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;
- The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or
- The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

If four of these criteria listed are not met, an individual may still be presumed to be an independent contractor based on full consideration of the nature of the individual situation with regard to satisfying **any** of the following conditions:

- The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.
- The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.
- The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.
- The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.
- The independent contractor may realize a profit or suffer a loss in connection with performing work or services.
- The independent contractor has continuing or recurring business liabilities or obligations.
- The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Section 2 creates s. 205.066, F.S., to exempt employees from having to pay a local business tax in their individual capacity. The bill specifies that independent contractors are not employees.

Employees are not to be held liable for failure of a principal or employer to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. Employees cannot be required to apply for an exemption.

A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for employees in order to obtain a local business tax receipt.

Section 3 amends s. 204.194, F.S., to delete language stating that only persons applying to the DBPR for the first time for a tax receipt must exhibit their certification, registration, or license. The bill further deletes the requirement that DBPR supply the appropriate local official with a current list of the professions it regulates and information regarding those persons for whom receipts should not be renewed. The bill deletes the requirement that the local official review the list.

Section 4 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. The fiscal impact of this bill has yet to be determined. However, if the fiscal impact of this bill is greater than $1.9 million then none of the exemptions provided in s. 18(d), Art. VII of the Florida Constitution apply, and the bill will require a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Professionally licensed employees would be exempt from local business taxes.

C. Government Sector Impact:

Local governments would experience an indeterminate negative fiscal impact from their reduced authority to raise revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

826286

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete line 93

and insert:

or obtain a local business tax receipt. For purposes of this section, an individual licensed and operating as a broker associate or sales associate under chapter 475 is an employee. An individual acting in

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 7

826286

and insert:

related to local business taxes; specifying that an individual licensed and operating as a broker associate or sales associate is an employee; specifying that an

614130

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 114 - 118

and insert:

practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation or any other state regulatory agency, including~~, or~~ any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local receipt may be issued. Online renewals may meet this requirement by providing for electronic certification by applicants. ~~Thereafter, only persons~~

614130

~~applying for the first~~

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 18

and insert:

205.194, F.S.; requiring that a person applying for or renewing a local business tax receipt to engage in or manage any business or occupation regulated by a state agency to exhibit proof of an active registration or license; providing for online renewals; deleting obsolete provisions; deleting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SJR 658
INTRODUCER:	Senator Fasano
SUBJECT:	Homestead/Non-Homestead Property
DATE:	March 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			BC	
4.			RC	
5.				
6.				

I. Summary:

This joint resolution proposes an amendment to sections 4 and 6, Article VII, of the Florida Constitution, and creates sections 32 and 33, Article XII, of the Florida Constitution to prohibit increases in the assessed value of homestead property if the just value of the property decreases and reduces from ten percent to three percent, the limitation on annual assessment increases applicable to non-homestead property. This joint resolution also creates an additional homestead exemption for specified homestead owners.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

B.) Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.[4] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[5] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[6] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[7] Certain working waterfront property is assessed based upon the property's current use.[8]

C.) Additional Assessment Limitations

Sections 4(g) and (h), Article VII, of the Florida Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property shall be assessed at just value after a change of ownership or control.[9]

Article XII, section 27, of the Florida Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g) are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

D.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[10]

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[2] The constitutional provisions in article VII, section 4, of the Florida Constitution, were implemented in Part II of ch. 193, F.S.
[3] FLA. CONST. art. VII, s. 4(a).
[4] FLA. CONST. art. VII, s. 4(c).
[5] FLA. CONST. art. VII, s. 4(e).
[6] FLA. CONST. art. VII, s. 4(f).
[7] FLA. CONST. art. VII, s. 4(i).
[8] FLA. CONST. art. VII, s. 4(j).
[9] FLA. CONST. art. VII, s. 4(g) and (h).
[10] FLA. CONST. art. VII, ss. 3 and 6.

Homestead Exemption

Article VII, section 6, of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.

Additional Homestead Exemption, Amendment 3 Proposed for 2010 Ballot *(2009 SJR 532)*

In 2009, the Legislature passed SJR 532 which was posed to go before the voters as Amendment 3 on the November 2010 ballot. The proposed amendment 3 sought to reduce the annual assessment limitation from 10 to 5 percent annually and to provide an additional homestead exemption for "a person or persons" who have not owned a principal residence in the previous *eight* years that is equal to *25 percent* of the just value of the homestead in the first year for all levies, up to *$100,000*. The amount of the additional homestead exemption decreases by 20 percent of the initial exemption each succeeding five years until it is no longer available in the sixth and subsequent years.[11]

However, in August 2010, the Florida Supreme Court removed Amendment 3 from the 2010 Ballot, on the grounds that the ballot title and summary were misleading and failed to comply with the constitutional accuracy requirement implicitly provided in Art. XI, section 5(a), of the Florida Constitution.[12] The Court stated that the accuracy requirement is implicitly indicated in section 5(a) through the statement that the proposed amendment "shall be submitted to the electors at the next general election." Specifically, the Court stated that:

> Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.[13]

The Court further stated that the accuracy requirement is codified in Florida Statutes in s. 106.161(1), F.S., which in part provides that:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . .

In determining whether a ballot title and summary are in compliance with the accuracy requirement, courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.' "[14]

[11] Fla. CS for SJR 532, 1st Eng. (2009) (Senator Lynn and others)
[12] *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).
[13] *Id.* at 657, citing *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (further reiterating that the accuracy requirement is codified in s. 106.161(1), F.S. (2009)).
[14] *Id.* at 659, citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).

Based on this test, the Florida Supreme Court determined that the ballot title and summary for Amendment 3 was "neither accurate nor informative" and "are confusing to the average voter."[15] The Court supported its holding based on the following:

- Neither the title nor the summary provided notice that the additional exemption is only available for properties purchased on or after January 1, 2010. Stating that the "lack of an effective date renders it impossible for a voter to know which homeowners would qualify for the exemption."[16]
- The terms "new homestead owners" in the title coupled with "first-time homestead" in the summary are ambiguous as it conveys the message that to be eligible for the additional exemption, the property owner must have both not owned a principal residence during the preceding eight years *and* have never previously declared the property homestead.[17]
- The use of both the terms "principal residence" and "first-time homestead" in the ballot title and summary is misleading.[18]
- There is a material omission in the ballot title and summary, as they fail to "note that the additional exemption is not available to a person whose spouse has owned a principal residence in the preceding eight years."[19]

"Save Our Homes" Assessment Limitation

The "Save Our Homes" provision in article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).[20] The Save Our Homes limitation was amended into the Florida Constitution in 1992, to provide that:

- All persons entitled to a homestead exemption under section 6, Art. VII of the State Constitution, have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year could not exceed the lower of:
    - Three percent of the prior year's assessment, or
    - The percent change in the Consumer Price Index (CPI) for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
- No assessment may exceed just value.

In 2008, Florida voters approved an additional amendment to article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued "Save Our Homes" benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to $500,000 of the "Save Our Homes" accrued benefit to the new homestead.

[15] *Id.* at 657 and 660.
[16] *Id.*
[17] *Id.*
[18] *Roberts*, at 657 and 660.
[19] *Id.* at 657 and 661.
[20] FLA. CONST. art. VII, s. 4(d).

Section 193.155, Florida Statutes

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the "Save Our Homes" amendment into s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994.[21] Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the "Save Our Homes" provision in Article VII, section 4(d), of the Florida Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lower of:

- Three percent of the assessed value from the prior year; or
- The percentage change in the CPI for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics. [22]

Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds the just value, the assessed value must be lowered to just value of the property.

Rule 12D-8.0062, Florida Administrative Code (F.A.C.): "The Recapture Rule"

In October 1995, the Governor and the Cabinet adopted rule 12D-8.0062, F.A.C., of the Department of Revenue, entitled "Assessments; Homestead; and Limitations".[23] The administrative intent of this rule is to govern "the determination of the assessed value of property subject to the homestead assessment limitation under article VII, section 4(c), of the Florida Constitution, and s. 193.155, F.S."[24]

Subsection (5) of Rule 12D-8.0062, F.A.C., is popularly known as the "recapture rule". This provision requires property appraisers to increase the prior year's assessed value of a homestead property by the lower of three percent or the CPI on all property where the value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., which is referred to as the "recapture provision" states:

> (5) Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is *required* to increase the prior year's assessed value ….[25]

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[21] *See Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994) (stating that "the clear language of the amendment establishes January 1, 1994, as the first "just value" assessment date, and as a result, requires the operative date of the amendment's limitations, which establish the "tax value" of homestead property, to be January 1, 1995").

[22] Section 193.155(1), F.S.

[23] While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12S-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, F.S. Section 195.027, F.S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and that the Legislature intends that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and that the administration will be uniform, just and otherwise in compliance with the requirements of general law and the constitution.

[24] Rule 12D-8.0062(1), F.A.C.

[25] Rule 12D-8.0062(5), F.A.C. (emphasis added).

Under current law, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead owners entitled to the "Save Our Homes" cap whose property is assessed at less than just value may see an increase in the assessed value of their home during years where the just/market value of their property decreased.[26]

Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be equal to the prior year's assessed value decreased by that percentage.

Markham v. Department of Revenue[27]

On March 17, 1995, William Markham, a Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue's proposed "recapture rule" within Rule 12D-8.0062, F.A.C. Markham alleged that the proposed rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious".[28] Markham also claimed that subsection (5) of the rule was at variance with the constitution - specifically that it conflicted with the "intent" of the ballot initiative and that a third limitation relating to market value or movement[29] should be incorporated into the language of the rule to make it compatible with the language in article VII, section 4(c), of the Florida Constitution.

A final order was issued by The Division of Administrative Hearings on June 21, 1995, which upheld the validity of Rule 12D-8.0062, F.A.C., and the Department of Revenue's exercise of delegated legislative authority. The hearing officer determined that subsections (5) and (6) of the administrative rule were consistent with article VII, section 4(c), of the Florida Constitution. The hearing officer also held that the challenged portions of the rule were consistent with the agency's mandate to adopt rules under s. 195.027(1), F.S., since the rule had a factual and logical underpinning, was plain and unambiguous, and did not conflict with the implemented law.[30]

In response to the petitioner's assertion of a third limitation on market movement, the hearing officer concluded that the rule was not constitutionally infirm since there was no mention of "market movement" or "market value" in the ballot summary of the amendment nor did the petitioner present any evidence of legislative history concerning the third limitation.[31]

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to Article VII, section 4, of the Florida Constitution, to prohibit increases in the assessed value of homestead property if the just value of the property decreases, and reduces the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 3 percent. This joint resolution also amends

[26] *Markham v. Dep't of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995) (stating that "subsection (5) requires an increase to the prior year's assessed value in a year where the CPI is greater than zero").
[27] *Id.*
[28] *Id*.
[29] *Id.* at ¶ 21 (stating that "[t]his limitation, grounded on "market movement," would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase").
[30] *Id.* at ¶ 20.
[31] *Id.* at ¶ 22.

Article VII, section 6, of the Florida Constitution, to create an additional homestead exemption for specified homestead owners.

The joint resolution creates sections 32 and 33, Article XII, of the State Constitution, to provide when the amendments prescribed herein shall take effect.

Assessment Limitation on Homestead Property *(Recapture Rule)*

The joint resolution proposes an amendment paragraph 1 of subsection (d) in s. 4, Art. VII, of the Florida Constitution, to provide that an assessment to homestead property may not increase if the just value of the property is less than the just value of the property on the preceding January 1. The joint resolution also deletes obsolete language provided in paragraph 8 of subsection (d) in s. 4, Article VII, of the Florida Constitution.

The joint resolution creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters, this amendment will take effect on January 1, 2013.

Assessment Limitation on Non-Homestead Property

The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in s. 4, Art. VII, of the Florida Constitution, to reduce the annual assessment limitation for specified non-homestead property from 10 percent to 3 percent. This assessment limitation is pursuant to general law and subject to the conditions specified in such law.

The joint resolution also creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters, this amendment will take effect on January 1, 2013.

Additional Homestead Exemption for Specified Homestead Owners

The joint resolution proposes to create subsection (f) in s. 6, Art. VII, of the Florida Constitution. This amendment allows individuals that are entitled to a homestead exemption under s. 6(a), Art. VII, of the Florida Constitution, that have not previously received a homestead exemption in the past three years to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property up to $200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies.

The joint resolution also creates section 33, Article XII, of the Florida Constitution, to provide that if approved by Florida voters, this amendment will take effect on January 1, 2013, and shall be available for properties purchased on or after January 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18, of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments
Section 1, Art. XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(d), Art. XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

Section 5(e), Art. XI, of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

Section 5(a), Art. XI, of the Florida Constitution, and s. 106.161(1), F.S., require constitutional amendments submitted to the vote of the people to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'"[32]

[32] *Roberts*, at 659, citing *Florida Dep't of State v. Slough,* 992 So.2d 142, 147 (Fla. 2008).

Equal Protection Clause
The United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction, the equal protection of law."[33] In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.[34] In these instances, courts have used the rational basis test to determine the constitutionality of discriminatory treatment in property tax assessments.[35] Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.[36]

It has been argued that the recapture rule provided in ss. (5) of Rule 12D-8.0062, F.A.C., diminishes the existing inequity between property assessments over time.[37] To the extent that this view is adopted, taxpayers may argue that the elimination of the recapture rule creates a stronger argument for an Equal Protection Clause violation. If this argument is made, the court would need to determine whether the components of this joint resolution are rationally related to a legitimate state interest.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If approved by the voters, this joint resolution will provide an ad valorem tax relief to specified homestead owners. Owners of specified residential rental and commercial real property will experience further reduction in tax assessments due to the 3 percent assessment limitation. This joint resolution will also have an effect on local government revenue.

B. Private Sector Impact:

Assessment Limitation on Homestead Property *(Recapture Rule)*
If approved by the voters, taxes will be reduced for those taxpayers whose homesteads have depreciated but are still assessed at less than just value. The joint resolution will redistribute the tax burden. It may benefit homestead property that has a "Save Our Homes" differential; however, non-homestead and recently established homestead property will pay a larger proportion of the cost of local services. To the extent that local governments do not raise millage rates, taxpayers may experience a reduction in government and education services due to any reductions in ad valorem tax revenues.

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[33] U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.
[34] *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000) (holding that the Florida homestead exemption did not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause). *See also Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009) (holding that the Save Our Homes Amendment of the State Constitution did not violate a nonresident's rights under the Equal Protection Clause). *See also Nordlinger v. Hahn*, 505 U.S. 1 (1992) (stating that the constitutional amendment in California that limited real property tax increases, in the absence of a change of ownership to 2% per year, was not a violation of the Equal Protection Clause).
[35] *Nordlinger*, at 33-34, stating that a "classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose").
[36] *Id.*
[37] Walter Hellerstein et al., Shackelford Professor of Taxation, LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA'S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES, at 83 (on file with the Senate Committee on Community Affairs).

Assessment Limitation on Non-Homestead Property
Owners of existing residential rental and commercial real property may experience property tax savings and will not see their taxes increase significantly in a single year. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will be at a competitive disadvantage compared to older properties with respect to their tax burden.

Additional Homestead Exemption for Specified Homestead Owners
If approved by the voters, specified homestead owners will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by one-fifth each year and will disappear in the sixth year after the homestead is established. During this period, the ad valorem taxes levied on the homestead will increase significantly each year. Other property owners in the taxing jurisdiction will pay higher taxes if the jurisdiction adjusts the millage rate to offset the loss to the tax base.

C. Government Sector Impact:

Local governments may experience a reduction in the ad valorem tax base if this joint resolution is approved by voters. Since this amendment would require voter approval, the Revenue Estimating Conference has adopted an indeterminate negative estimate for SJR 658.

Additional Homestead Exemption for Specified Homestead Owners
Should this amendment be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows: [38]

FY 2013-14	FY 2014-15	Recurring Impact
-$94.5 million	-$186.5 million	-$344.5 million

Assessment Limitation on Homestead Property *(Recapture Rule)*
The Revenue Estimating Conference has not reviewed the recapture provisions of SJR 658, however when addressing similar legislation on the recapture amendment (2011 SJR 210), the Revenue Estimating Conference determined that the fiscal impact on school taxes, should the joint resolution be approved by the voters, would be as follows for :

FY 2013-14	FY 2014-15	Recurring Impact
-$5.0 million	-$8.0 million	-$17.0 million

[39]

The fiscal impact on non-school taxes would be as follows:

[38] Revenue Estimating Conference, *First-Time Homesteaders SJR 658 & HJR 381* (Feb. 20, 2011) (assuming that 40 percent of homesteaders will be first-time homesteaders, to account for the definition of first-time homebuyers).
[39] Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).

FY 2013-14	FY 2014-15	Recurring Impact
-$6.0 million	-$11.0 million	-$18.0 million

[40]

Assessment Limitation on Non-Homestead Property
The Revenue Estimating Conference has not provided a fiscal impact on the constitutional amendment within SJR 658 that reduces from 10 percent to 3 percent, the limitation on annual assessment increases applicable to non-homestead property.

Publication Requirements
Section 5(d), Art. XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year. [41] The division has not estimated the full publication costs to advertise this constitutional amendment at this time.

VI. Technical Deficiencies:

This joint resolution uses the term "fair market value" and "market value" instead of the term "just value". Although courts have interpreted the term "just value" to be synonymous with "fair market value", [42] the Florida Constitution and Florida Statutes currently use the term "just value".

The Florida Department of Revenue has stated that the use of different terms could generate a perception that two different things are intended.[43] The Department also states that the term "just value" statutorily includes a deduction for costs of sale, and that there is currently an operational and quantitative difference between market value and just value in Florida's property tax system pursuant to ss. 193.011(8) and 192.001(18), F.S.[44]

The Department has also made the following two recommendations:

- Replacing "An increase" on line 49 with "A change".[45]
- Clarifying on line 58 that the joint resolution has no effect on the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.[46]

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[40] Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).
[41] Florida Department of State, *Senate Joint Resolution 390 Fiscal Analysis* (Jan. 28, 2011) (on file with the Senate Committee on Community Affairs).
[42] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[43] Florida Department of Revenue, *SJR 658 Fiscal Analysis,* at 3 (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).
[44] *Id.*
[45] *Id.* at 4-5. The Department states that "the term 'increase' in assessed value at subsection d(1)(a) appears to intend that the recapture to assessed value occurs if the percent change in consumer price index is negative. Currently, if the percent change in consumer price index is negative then the assessed value is required to decrease, which may not be a requirement under the bill's use of the term 'increase.'"

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[46] *Id.*

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause and insert:

That the following amendments to Sections 4 and 6 of Article VII and the creation of Sections 32 and 33 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 ~~of this Article~~ shall have their homestead assessed ~~at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only~~ as provided in this subsection.

(1) Assessments subject to this subsection shall change ~~be changed~~ annually on January 1 ~~1st~~ of each year.~~;~~ ~~but those changes in assessments~~

a. A change in an assessment may ~~shall~~ not exceed the lower of the following:

1.~~a.~~ Three percent ~~(3%)~~ of the assessment for the prior year.

2.~~b.~~ The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or a

successor index ~~reports~~ for the preceding calendar year ~~as initially reported by the United States Department of Labor, Bureau of Labor Statistics~~.

b. Except for changes, additions, reductions, or improvements to homestead property assessed as provided in subsection (d)(5), an assessment may not increase if the just value of the property is less than the just value of the property on the preceding January 1.

(2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

(3) After a ~~any~~ change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1 ~~1st~~ of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall ~~only~~ change only as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law.~~; provided,~~ However, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this subsection ~~amendment~~ are severable. If a provision ~~any of the provisions~~ of this subsection is ~~amendment shall be~~ held unconstitutional by a ~~any~~

court of competent jurisdiction, the decision of the ~~such~~ court does ~~shall~~ not affect or impair any remaining provisions of this subsection ~~amendment~~.

(8)a. A person who ~~establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who~~ has received a homestead exemption pursuant to Section 6 ~~of this Article~~ as of January 1 of either of the 2 ~~two~~ years immediately preceding the establishment of a ~~the~~ new homestead is entitled to have the new homestead assessed at less than just value. ~~If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007.~~ The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and

multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner’s spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law. However, ~~;~~ ~~but~~ those changes in assessments may ~~shall~~ not exceed 3 ~~ten~~ percent ~~(10%)~~ of the assessment for the prior year. An assessment may not increase if the just value of the property is less than the just value of the property on the preceding date of assessment provided by law.

(2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law. ~~;~~ However, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the

assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law. However, ~~;~~ ~~but~~ those changes in assessments may ~~shall~~ not exceed 3 ~~ten~~ percent ~~(10%)~~ of the assessment for the prior year. An assessment may not increase if the just value of the property is less than the just value of the property on the preceding date of assessment provided by law.

(2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law. ~~;~~ However, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real

property used for residential purposes:

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of $25,000 ~~twenty-five thousand dollars~~ and, for all levies other than school district levies, on the assessed valuation greater than $50,000 ~~fifty thousand dollars~~ and up to $75,000 ~~seventy-five thousand dollars~~, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership

representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of 98 ~~ninety-eight~~ years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of Section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding $50,000 ~~fifty thousand dollars~~ to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age 65 ~~sixty-five~~ and whose household income, as defined by general law, does not

exceed $20,000 ~~twenty thousand dollars~~. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The legislature may, by general law, waive the annual application requirement in subsequent

years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

(f) As provided by general law and subject to conditions specified therein, every person who establishes the right to receive the homestead exemption provided in subsection (a) within 1 year after purchasing the homestead property and who has not owned property in the previous 3 calendar years to which the homestead exemption provided in subsection (a) applied is entitled to an additional homestead exemption in an amount equal to 50 percent of the homestead property's just value on January 1 of the year the homestead is established for all levies other than school district levies. The additional exemption shall apply for a period of 5 years or until the year the property is sold, whichever occurs first. The amount of the additional exemption shall not exceed $200,000 and shall be reduced in each subsequent year by an amount equal to 20 percent of the amount of the additional exemption received in the year the homestead was established or by an amount equal to the difference between the just value of the property and the assessed value of the property determined under Section 4(d), whichever is greater. Not more than one exemption provided under this subsection shall be allowed per homestead property. The additional exemption shall apply to property purchased on or after January 1, 2012, but shall not be available in the sixth and subsequent years after the additional exemption is first received.

ARTICLE XII

SCHEDULE

SECTION 32. Property assessments.—This section and the amendment of Section 4 of Article VII protecting homestead

<u>property having a declining just value and reducing the limit on the maximum annual increase in the assessed value of nonhomestead property from 10 percent to 3 percent shall take effect January 1, 2013.</u>

<u>SECTION 33. Additional homestead exemption for owners of homestead property who recently have not owned homestead property.—This section and the amendment to Section 6 of Article VII providing for an additional homestead exemption for owners of homestead property who have not owned homestead property during the 3 calendar years immediately preceding purchase of the current homestead property shall take effect January 1, 2013, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2012.</u>

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTIONS 4, 6
ARTICLE XII, SECTIONS 32, 33

PROPERTY ASSESSMENT; HOMESTEAD VALUE DECLINE; NONHOMESTEAD INCREASE LIMITATION REDUCTION; ADDITIONAL HOMESTEAD EXEMPTION.—

(1) In certain circumstances, the law requires the assessed value of homestead property to increase when the just value of the property decreases. Therefore, this amendment provides that the assessed value of homestead property will not increase if the just value of that property decreases and provides an effective date of January 1, 2013.

(2) This amendment reduces from 10 percent to 3 percent the limitation on annual increases in assessments of nonhomestead real property and provides an effective date of January 1, 2013.

(3) This amendment also provides owners of homestead property who have not owned homestead property during the 3 calendar years immediately preceding purchase of the current homestead property with an additional homestead exemption equal to 50 percent of the property's just value in the first year for all levies other than school district levies, limited to $200,000; applies the additional exemption for the shorter of 5 years or the year of sale of the property; reduces the amount of the additional exemption in each succeeding year for 5 years by the greater of 20 percent of the amount of the initial additional exemption or the difference between the just value and the assessed value of the property; limits the additional exemption to one per homestead property; limits the additional exemption to properties purchased on or after January 1, 2012; prohibits availability of the additional exemption in the sixth and subsequent years after the additional exemption is granted; and provides for the amendment to take effect January 1, 2013, and apply to properties purchased on or after January 1, 2012.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the resolving clause and insert:

Senate Joint Resolution

A joint resolution proposing amendments to Sections 4 and 6 of Article VII and the creation of Sections 32 and 33 of Article XII of the State Constitution to prohibit increases in the assessed value of homestead property if the just value of the property decreases,

reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for owners of homestead property who have not owned homestead property for a specified time before purchase of the current homestead property, and application and limitations with respect thereto, and provide effective dates.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1144
INTRODUCER:	Senator Margolis
SUBJECT:	Local Government
DATE:	March 6, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			TR	
4.				
5.				
6.				

I. Summary:

This bill authorizes the board of county commissioners to negotiate the lease of real property for a term not to exceed five years, rather than having to go through the competitive bidding process. The bill also allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located.

This bill substantially amends sections 125.35 and 337.29, Florida Statutes.

II. Present Situation:

County Leasing Authority

Article VIII, section 1 of the Florida Constitution provides, in part, that counties have the power to carry on local government to the extent provided by, or not inconsistent with, general or special law. This constitutional provision is codified in s. 125.01, F.S.[1] Counties are specifically authorized "to employ personnel, expend funds, enter into contractual obligations, and purchase or *lease* and sell or exchange any *real* or personal *property*."[2]

Section 125.35(1)(a), F.S., specifically authorizes the board of county commissioners (board) to "lease real property, belonging to the county."

[1] Op. Att'y Gen. Fla. 88-34 (1988) (citing *Speer v. Olson*, 367 So. 2d 207, 210 (Fla. 1978) (finding that ch. 125, F.S., implements art. VIII, section 1(f) of the Florida Constitution)).
[2] *Id*. (emphasis added).

To lease property, the board of county commissioners must determine that it is in the best interest of the county to do so and must use the competitive bidding process. The board may use its discretion when setting the terms and conditions of the lease.[3]

The board is authorized to negotiate the lease of an airport or seaport facility under such terms and conditions as negotiated by the board.[4] This provision authorizes the board of county commissioners to negotiate a lease of an airport or seaport facility without having to go through the competitive bidding process.[5]

Alternatively, a local government may by ordinance prescribe disposition standards and procedures to be used by the county in leasing real property owned by the county. The standards and procedures must:

- Establish competition and qualification standards upon which disposition will be determined.
- Provide reasonable public notice.
- Identify how an interested person may acquire county property.
- Set the types of negotiation procedures.
- Set the manner in which interested persons will be notified of the board's intent to consider final action and the time and manner for making objections.
- Adhere to the governing comprehensive plan and zoning ordinances.[6]

Competitive Bidding

The competitive bidding process is used throughout the Florida statutes to ensure that goods and services are being procured at the lowest possible cost.[7] The First District Court of Appeal explained the public benefit of competitive bidding:

> The principal benefit flowing to the public authority is the opportunity of purchasing the goods and services required by it at the best price obtainable. Under this system, the public authority may not arbitrarily or capriciously discriminate between bidders, or make the award on the basis of personal preference. The award must be made to the one submitting the lowest and best bid, or all bids must be rejected and the proposal re-advertised.[8]

Section 125.35(1)(a), F.S., requires the board of county commissioners to use the competitive bidding process when selling and conveying real or personal property or leasing real property belonging to the county. Unlike the competitive bidding process for goods and services, where the state is trying to find the lowest and best bid, when a county is trying to sell or lease real property under s. 125.35, F.S., the board must sell or lease to the "highest and best bidder."

[3] Section 125.35(1)(a), F.S.
[4] Section 125.35(1)(b), F.S.
[5] See Op. Att'y Gen. Fla. 99-35 (1999).
[6] Section 125.35(3), F.S.
[7] *See, e.g.*, ss. 112.313(12)(b), 253.54, 337.02, 379.3512, and 627.64872(11), F.S.
[8] *Hotel China & Glassware Co. v. Bd. of Public Instruction,* 130 So. 2d 78, 81 (Fla. 1st DCA 1961).

However, the competitive bidding process is often time consuming and can result in lost revenue.[9] Temporary leases may be appropriate in certain situations, such as in the event of a natural disaster or for short-term, revenue-generating ventures or replacing vendors such as coffee shops in government buildings. However, currently local governments have no discretion to bypass the bidding process.[10]

Road Mapping

Mapping of Florida's roads is done at the state and local levels. "[C]ounty general highway maps are a statewide series of maps depicting the general road system of each county."[11] The Florida Department of Transportation (DOT or department) maintains an Official Transportation Map for the state as well as maps of each of the department's districts. Right-of-way maps contain maps of local and state roads with enough specificity to show how they delineate the boundaries between the public right-of-way and abutting properties.[12] Right-of-way maps are kept by DOT's surveying and mapping offices within each district[13] and by the circuit court clerk of the county.[14]

Section 337.29, F.S., states that title to all roads designated in the State Highway System or State Park Road System is in the state. Local governments must duly record a *deed or right-of-way map* when:

- Title vests for highway purposes in the state, or
- The department acquires lands.[15]

When roads are transferred between jurisdictions, the title to those roads is given to the governmental entity to which the roads were transferred. Title is transferred to the governmental entity upon the recording of a *right-of-way map* by the governmental entity in the county where the rights-of-way are located.[16] Therefore, unlike state acquisition of roadways, local government acquisition cannot be perfected by deed.

In 2010, the Legislature unanimously passed SB 1004 by Senator Gelber (identical to SB 1144). However, Governor Crist vetoed the bill. The Governor believed that competitive bidding protects the public's interest and assured the best use of taxpayer dollars. As a result, the Governor chose to withhold approval for SB 1004.

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[9] Conversation with Jess McCarty, Assistant County Attorney, Miami-Dade County (Mar. 10, 2010).
[10] *See Outdoor Media of Pensacola, Inc. v. Santa Rosa County*, 554 So. 2d 613, 615 (Fla. 1st DCA 1989); *Rolling Oaks Homeowner's Ass'n, Inc. v. Dade County*, 492 So. 2d 686, 689 (Fla. 3d DCA 1986); *Randall Industries, Inc. v. Lee County*, 307 So. 2d 499, 500 (Fla. 2d DCA 1975).
[11] Florida Dep't of Transp., *Surveying & Mapping Office – Maps*, http://www.dot.state.fl.us/surveyingandmapping/maps.shtm (last visited Mar. 10, 2010).
[12] *See generally id.*
[13] *See generally* Fla. Dep't of Transp., *Surveying & Mapping Office – Right of Way Maps*, http://www.dot.state.fl.us/surveyingandmapping/rowmap.shtm (last visited Mar. 10, 2010).
[14] Section 177.131, F.S.
[15] Section 337.29(2), F.S.
[16] Section 337.29(3), F.S. (emphasis added).

III. Effect of Proposed Changes:

Section 1 amends s. 125.35, F.S., to authorize the board of county commissioners to negotiate the lease of real property for a term not to exceed five years, without having to go through the competitive bidding process.

Section 2 amends s. 337.29, F.S., to allow government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located. This change may decrease the length of time that the transfer-of-title process requires under current law.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Currently, when a county wants to lease its property it must obtain competitive bids and pick the "highest and best bidder."[17] This process often takes many months, especially in large counties. During the course of the bidding process, the county property often remains vacant, resulting in lost revenue and inconvenience to the county.[18] This bill will allow boards of county commissioners (boards) to negotiate leases of county property for five years or less, without having to go through the competitive bidding process. As a

[17] Section 125.35(1)(a), F.S.
[18] Conversation with and e-mail from Jess McCarty, Assistant County Attorney, Miami-Dade County, to professional staff of the Senate Committee on Judiciary (Mar. 10, 2010).

result, boards will have more flexibility to determine the terms and conditions of these types of leases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 634
INTRODUCER:	Senator Simmons
SUBJECT:	Citizens Property Ins. Corp./Prohibited Activities
DATE:	March 7, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Favorable**
2.	Wood	Yeatman	CA	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill repeals s. 215.55951, F.S. The statute prohibits Citizens Property Insurance Corporation (Citizens) from seeking a rate or assessment increase based on either amendments to s. 215.5595, F.S. made by ch. 2008-66, L.O.F., or transfers enacted in ch. 2008-66, L.O.F., to the Insurance Capital Build-Up Incentive Program.

This bill repeals section 215.55951, Florida Statutes.

II. Present Situation:

Section 215.55951, F.S., prohibits Citizens from justifying a rate or assessment increase based on amendments enacted by ch. 2008-66, L.O.F., to s. 215.5595, F.S., the Insurance Capital Build-Up Incentive Program ("the Program"). The Legislature created the Program in 2006 to provide surplus note loans to insurers of up to $25 million, repayable over 20 years at the 10-year Treasury bond rate. The Program was funded with a $250 million dollar appropriation from the General Revenue Fund. To receive a loan, an insurer was required to contribute an equal amount of new capital, commit to meeting a specified minimum premium-to-surplus writing ratio for residential policies covering windstorm, and maintain at least a $50 million surplus after receiving program funds. Thirteen insurers received surplus note loans pursuant to the 2006 Program totaling $247.5 million dollars.[1]

[1] In 2009, the Legislature required all principal, interest, and late fees received from insurers to be transferred to General Revenue.

Chapter 2008-66, L.O.F., revised the requirements for the Program, and committed an additional $250 million to write new loans. The 2008 Program loans were intended to be funded by the transfer of $250 million from Citizens surplus to the General Revenue Fund. The State Board of Administration would then have made quarterly transfers to Citizens of the principal and interest payments made on surplus loans funded by the transfer. The Legislature enacted s. 215.55951, F.S., prohibiting Citizens from using the 2008 amendments or transfers to justify rate or assessment increases. However, Governor Crist vetoed the transfer of Citizens surplus to fund the Program. As a result, no insurers received loans pursuant to the 2008 iteration of the Program due to a lack of funding.

III. Effect of Proposed Changes:

Section 1 repeals s. 215.55951, F.S., which currently prohibits Citizens from justifying a rate or assessment increase based on amendments enacted in ch. 2008-66, L.O.F., to the Insurance Capital Build-Up Incentive Program. Chapter 2008-66, L.O.F., funded the program by requiring Citizens to transfer $250 million to the General Revenue Fund for transfer to the SBA to fund the Capital Build-Up Incentive Program. No loans were issued using Citizens monies because the transfer was vetoed by the Governor.

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 638
INTRODUCER:	Senator Simmons
SUBJECT:	Residential Property/Evaluation Grant Program
DATE:	March 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Favorable**
2.	Wood	Yeatman	CA	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends s. 627.0629, F.S., and deletes subsection (8) relating to a grant program for the evaluation of residential property structural soundness. This program, for homeowners insured by Citizens Property Insurance Corporation (Citizens) in the high risk account to obtain evaluations of the wind resistance of their homes, was to be administered by Citizens "to the extent that funds are provided for this purpose in the General Appropriations Act (GAA)."[1] However, no such appropriation has been awarded in recent years.

This bill substantially amends section 627.0629, Florida Statutes.

II. Present Situation:

In 1997, the Legislature enacted s. 627.0629(8), F.S.,[2] which established a grant program for homeowners insured by the Florida Windstorm Underwriting Association (FWUA) to obtain evaluations of the wind resistance of their homes. The Department of Community Affairs is required by statute to establish by rule standards to govern evaluation, recommendations for retrofitting, the eligibility of those who would perform the evaluations, and the selection of the applicants to obtain the grants. The program would be administered by the FWUA. All provisions of the program, however, are to be effected "to the extent that funds are provided for this purpose in the General Appropriations Act (GAA)." In 2002, the Florida Legislature combined the FWUA with the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and thereby created Citizens. At that point, Citizens assumed the

[1] Section 627.0629(8)(b), F.S.
[2] Chapter 97-55, s. 4, Laws of Fla.

responsibility for administering the structural soundness evaluation grant program, to the extent that funds are provided by the GAA.

Representatives for Citizens state that no grants have been awarded since the inception of the corporation in 2002 because funds have not been provided by the GAA.[3] Representatives of the Division of Emergency Management within the Department of Community Affairs report that the agency has not promulgated rules to establish the grant program because funds have not been provided by the GAA, which is a precondition for the program.[4]

III. Effect of Proposed Changes:

Section 1 deletes s. 627.0629(8), F.S., relating to a grant program for the evaluation of residential property structural soundness. The program is conditioned on funds being provided in the GAA, and no funds have been provided for that purpose. Accordingly, no grants have been awarded under s. 627.0629(8), F.S. The presently unfunded program, intended to provide homeowners a way to evaluate the wind resistance of their homes with respect to preventing damage from hurricanes, is terminated by this bill.

Current subsection (9) is renumbered as subsection (8).

The Office of Insurance Regulation (OIR) states that this bill has no impact on the OIR.[5]

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[3] Conversation with Christine Ashburn, Director of Legislative and External Affairs, Citizens Property Insurance Corporation (Mar. 9, 2011).
[4] Conversation with Will Booher, Director of External Affairs, Department of Community Affairs Division of Emergency Management (Mar. 9, 2011).
[5] Office of Insurance Regulation, *Senate Bill 638 Response* (Feb. 3, 2011) (on file with the Senate Committee on Community Affairs).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 800
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Education and Training Opportunities for Public Employees
DATE:	March 9, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			HE	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill expands education and training opportunities to certain local government employees. Eligible local government employees include law enforcement officers, correctional officers, firefighters, and emergency medical technicians or paramedics as further defined in statute. The bill includes a definition of state employee to include an employee of the executive or judicial branch of state government except for state university employees.

The bill includes certain local government employees as fee waiver beneficiaries.

This bill substantially amends the following sections of the Florida Statutes: 110.1099 and 1009.265.

II. Present Situation:

Education and Training Opportunities for State Employees

The Legislature recognizes that the application of productivity-enhancing technology and practice demands continuous educational and training opportunities. Therefore s. 110.1099, F.S., allows state employees to be authorized to receive a voucher or grant, for matriculation fees, to attend work-related courses at public community colleges, public career centers, or public universities. The Department of Management Services (DMS) may implement s. 110.1099, F.S., by rule and from funds appropriated by the Legislature. State agencies may support the training and education needs of its employees from funds appropriated to the agency.

When evening and weekend training and educational programs are not available, an employee may be authorized to take paid time off during his or her regular working hours for training and career development, as provided in s. 110.105(1), F.S., if such training benefits the employer as determined by that employee's agency head. An employee who exhibits superior aptitude and performance may be authorized by that employee's agency head to take a paid educational leave of absence for up to 1 academic year at a time, for specific approved work-related education and training. That employee must enter into a contract to return to state employment for a period of time equal to the length of the leave of absence or refund salary and benefits paid during his or her educational leave of absence.

An agency or the judicial branch may require an employee to enter into an agreement that requires the employee to reimburse the agency or judicial branch for the registration fee or similar expense for any training or training series when the cost of the fee or similar expense exceeds $1,000 if the employee voluntarily terminates employment or is discharged for cause from the agency or judicial branch within a specified period of time not to exceed 4 years after the conclusion of the training unless attendance was required by the employer.

State Employee Fee Waivers

Subject to approval by an employee's agency head or the equivalent, each state university and community college must waive tuition and fees for state employees[1] to enroll for up to 6 credit hours of courses per term on a space-available basis.[2]

The Chief Financial Officer, in cooperation with the community colleges and state universities, identifies and implements ways to ease the administrative burden to community colleges and state universities, including, but not limited to, providing easier access to verify state employment. Currently, colleges and universities are able to verify eligibility for tuition waivers for state employees only utilizing an online web application. This website is maintained by the Department of Financial Services (DFS) and contains only those employees paid through the Bureau of State Payrolls.[3] DFS does not have access to the payroll and/or employee information for the over 2,100 local government entities throughout the state.[4]

From funds appropriated by the Legislature for administrative costs to implement s. 1009.265, F.S., community colleges and state universities shall be reimbursed on a pro rata basis according to the cost assessment data developed by the Department of Education. The Auditor General reviews the cost assessment data in conjunction with his or her audit responsibilities for community colleges, state universities, and the Department of Education. However, the Auditor General has had limited responsibilities under this section as the Legislature has not appropriated moneys under s. 1009.265(4), F.S., in recent years.[5]

[1] Employees of the state include employees of the executive, legislative, and judicial branches of state government, except for persons employed by a state university.
[2] Section 1009.265, F.S.
[3] Department of Financial Services, Bill Analysis for SB 800 (2011) on file with the Senate Committee on Community Affairs.
[4] *Id.*
[5] Auditor General, Bill Analysis for SB 800 (2011) on file with the Senate Committee on Community Affairs.

Training for Law Enforcement, Correctional Officers, Firefighters, and EMTs or Paramedics

Chapter 943, F.S., specifies the standards and training requirements for law enforcement and correctional officers.[6] The training can be supplemented by grant programs.[7] An employing agency is authorized to pay: any costs of tuition of a trainee in attendance at an approved basic recruit training program, certain exam fees, or other course expenses. An employee may be required to reimburse the agency if they leave within two years, but this requirement may be waived.[8]

Chapter 633, F.S., specifies the standards and training requirements for firefighters. Employing agencies are authorized to pay part or all of the costs of tuition of trainees in attendance at approved training programs,[9] and supplemental compensation to each full-time firefighter who receives an associate or bachelor's degree in fire-related subjects.[10]

Chapter 401, F.S., sets up numerous training requirements for emergency medical technicians, paramedics, and first responders. Certain types of training programs are subsidized by grant programs.[11]

A 2005 Florida Attorney General Opinion addressed the question of whether a county may pay for EMT or paramedic training for volunteer firefighters, even though there is no assurance that they will continue to provide volunteer services after certification.[12] The opinion reasoned that in order to satisfy Art. VII, s. 10, the expenditure of county funds must be for a public purpose. "Ultimately, however, the determination of whether the expenditure of county funds fulfills a county purpose is one that the board of county commissioners, as the legislative body of the county, must make."[13] Therefore, the opinion concluded that if the county commission concluded that the expenditure served a public purpose it would be valid.[14]

III. Effect of Proposed Changes:

Section 1 amends s. s. 110.1099, F.S., to allow local government employees to receive education and training opportunities currently allowed for state employees under s. 110.1099, F.S. The bill defines:

- State employee as an employee of the executive or judicial branch of state government, except for a person employed by a state university.
- Local government employee as a full-time employee of a county or municipality who is a law enforcement officer, a correctional officer, a firefighter, or an emergency medical technician or paramedic.

[6] *See also* s. 11B-35.001, F.A.C.
[7] Section 943.031, F.S.
[8] Section 943.16, F.S.
[9] Section 633.37, F.S.
[10] Section 633.382. F.S.
[11] Section 401.113 and 401.24 F.S.
[12] Op. Att'y Gen. Fla. 2005-02 (2005)
[13] *Id.*
[14] *Id. but see* Op. Att'y Gen. Fla. 82-13 (1983) (prior to passage of s. 110.1099, F.S., finding a tuition payment for the clerk of the court did not serve a public purpose authorized by law).

Section 2 retitles s. 1009.265, F.S., as "Fee waivers." It expands the tuition waivers in s. 1009.265, F.S., from state employees to state and local employees. The Chief Financial officer would be required to identify and implement ways to ease the administrative burden to colleges and state universities, including providing easier access to verify *both* state and *local government* employment. It includes the same definitions for state and local employees used in section 1.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Financial Services (DFS) estimates that it will cost $220,550 in nonrecurring revenue to implement the amendments to s. 1009.265(2), F.S. According to the DFS, "For the Bureau of State Payrolls (BOSP) part, estimated costs to implement SB 0800 would be 5 employees working a total of 1000 hours at a blended rate of $23.39 per hour or $23,390. This would involve coordinating with over 2,100 local government entities as well as testing the website once it is developed. This would be an enormous project to undertake and could take years to fully implement." In addition, Division of Information Systems (DIS) has provided an estimated total of $197,160 for the costs of implementing s. 1009.265(2), F.S.

The cost to community colleges and universities is a negative indeterminate value. Local government employees would take class space but not pay full tuition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DFS recommends "[r]emoving the 'and local government' language from line 94 will remove DFS's requirement to verify local government employment which can't be done with existing resources because each independent entity has its own personnel system that will not interface with our system."

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	PCS/SB 800 & 836 (387978)
INTRODUCER:	Community Affairs Committee
SUBJECT:	Education and Training Opportunities for Public Employees
DATE:	March 10, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			HE	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill expands education and training opportunities to certain local government employees. Eligible local government employees include law enforcement officers, correctional officers, firefighters, and emergency medical technicians or paramedics as further defined in statute. The bill includes a definition of state employee to include an employee of the executive or judicial branch of state government except for state university employees.

The bill includes certain local government employees as fee waiver beneficiaries.

This bill substantially amends the following sections of the Florida Statutes: 110.1099 and 1009.265.

II. Present Situation:

Education and Training Opportunities for State Employees

The Legislature recognizes that the application of productivity-enhancing technology and practice demands continuous educational and training opportunities. Therefore s. 110.1099, F.S., allows state employees to be authorized to receive a voucher or grant, for matriculation fees, to attend work-related courses at public community colleges, public career centers, or public universities. The Department of Management Services (DMS) may implement s. 110.1099, F.S., by rule and from funds appropriated by the Legislature. State agencies may support the training and education needs of its employees from funds appropriated to the agency.

When evening and weekend training and educational programs are not available, an employee may be authorized to take paid time off during his or her regular working hours for training and career development, as provided in s. 110.105(1), F.S., if such training benefits the employer as determined by that employee's agency head. An employee who exhibits superior aptitude and performance may be authorized by that employee's agency head to take a paid educational leave of absence for up to 1 academic year at a time, for specific approved work-related education and training. That employee must enter into a contract to return to state employment for a period of time equal to the length of the leave of absence or refund salary and benefits paid during his or her educational leave of absence.

An agency or the judicial branch may require an employee to enter into an agreement that requires the employee to reimburse the agency or judicial branch for the registration fee or similar expense for any training or training series when the cost of the fee or similar expense exceeds $1,000 if the employee voluntarily terminates employment or is discharged for cause from the agency or judicial branch within a specified period of time not to exceed 4 years after the conclusion of the training unless attendance was required by the employer.

State Employee Fee Waivers

Subject to approval by an employee's agency head or the equivalent, each state university and community college must waive tuition and fees for state employees[1] to enroll for up to 6 credit hours of courses per term on a space-available basis.[2]

The Chief Financial Officer, in cooperation with the community colleges and state universities, identifies and implements ways to ease the administrative burden to community colleges and state universities, including, but not limited to, providing easier access to verify state employment. Currently, colleges and universities are able to verify eligibility for tuition waivers for state employees only utilizing an online web application. This website is maintained by the Department of Financial Services (DFS) and contains only those employees paid through the Bureau of State Payrolls.[3] DFS does not have access to the payroll and/or employee information for the over 2,100 local government entities throughout the state.[4]

From funds appropriated by the Legislature for administrative costs to implement s. 1009.265, F.S., community colleges and state universities shall be reimbursed on a pro rata basis according to the cost assessment data developed by the Department of Education. The Auditor General reviews the cost assessment data in conjunction with his or her audit responsibilities for community colleges, state universities, and the Department of Education. However, the Auditor General has had limited responsibilities under this section as the Legislature has not appropriated moneys under s. 1009.265(4), F.S., in recent years.[5]

[1] Employees of the state include employees of the executive, legislative, and judicial branches of state government, except for persons employed by a state university.
[2] Section 1009.265, F.S.
[3] Department of Financial Services, Bill Analysis for SB 800 (2011) on file with the Senate Committee on Community Affairs.
[4] *Id.*
[5] Auditor General, Bill Analysis for SB 800 (2011) on file with the Senate Committee on Community Affairs.

Training for Law Enforcement, Correctional Officers, Firefighters, and EMTs or Paramedics

Chapter 943, F.S., specifies the standards and training requirements for law enforcement and correctional officers.[6] The training can be supplemented by grant programs.[7] An employing agency is authorized to pay: any costs of tuition of a trainee in attendance at an approved basic recruit training program, certain exam fees, or other course expenses. An employee may be required to reimburse the agency if they leave within two years, but this requirement may be waived.[8]

Chapter 633, F.S., specifies the standards and training requirements for firefighters. Employing agencies are authorized to pay part or all of the costs of tuition of trainees in attendance at approved training programs,[9] and supplemental compensation to each full-time firefighter who receives an associate or bachelor's degree in fire-related subjects.[10]

Chapter 401, F.S., sets up numerous training requirements for emergency medical technicians, paramedics, and first responders. Certain types of training programs are subsidized by grant programs.[11]

A 2005 Florida Attorney General Opinion addressed the question of whether a county may pay for EMT or paramedic training for volunteer firefighters, even though there is no assurance that they will continue to provide volunteer services after certification.[12] The opinion reasoned that in order to satisfy Art. VII, s. 10, the expenditure of county funds must be for a public purpose. "Ultimately, however, the determination of whether the expenditure of county funds fulfills a county purpose is one that the board of county commissioners, as the legislative body of the county, must make."[13] Therefore, the opinion concluded that if the county commission concluded that the expenditure served a public purpose it would be valid.[14]

III. Effect of Proposed Changes:

Section 1 amends s. s. 110.1099, F.S., to allow local government employees to receive education and training opportunities currently allowed for state employees under s. 110.1099, F.S. The bill defines:

- State employee as an employee of the executive or judicial branch of state government, except for a person employed by a state university.
- Local government employee as a full-time employee of a county or municipality who is a law enforcement officer, a correctional officer, a firefighter, or an emergency medical technician or paramedic.

[6] *See also* s. 11B-35.001, F.A.C.
[7] Section 943.031, F.S.
[8] Section 943.16, F.S.
[9] Section 633.37, F.S.
[10] Section 633.382. F.S.
[11] Section 401.113 and 401.24 F.S.
[12] Op. Att'y Gen. Fla. 2005-02 (2005)
[13] *Id.*
[14] *Id. but see* Op. Att'y Gen. Fla. 82-13 (1983) (prior to passage of s. 110.1099, F.S., finding a tuition payment for the clerk of the court did not serve a public purpose authorized by law).

Section 2 retitles s. 1009.265, F.S., as "Fee waivers." It expands the tuition waivers in s. 1009.265, F.S., from state employees to state and local employees. The Chief Financial officer would be required to identify and implement ways to ease the administrative burden to colleges and state universities, including providing easier access to verify *both* state and *local government* employment. It includes the same definitions for state and local employees used in section 1.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Financial Services (DFS) estimates that it will cost $220,550 in nonrecurring revenue to implement the amendments to s. 1009.265(2), F.S. According to the DFS, "For the Bureau of State Payrolls (BOSP) part, estimated costs to implement SB 0800 would be 5 employees working a total of 1000 hours at a blended rate of $23.39 per hour or $23,390. This would involve coordinating with over 2,100 local government entities as well as testing the website once it is developed. This would be an enormous project to undertake and could take years to fully implement." In addition, Division of Information Systems (DIS) has provided an estimated total of $197,160 for the costs of implementing s. 1009.265(2), F.S.

The cost to community colleges and universities is a negative indeterminate value. Local government employees would take class space but not pay full tuition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DFS recommends "[r]emoving the '<u>and local government</u>' language from line 94 will remove DFS's requirement to verify local government employment which can't be done with existing resources because each independent entity has its own personnel system that will not interface with our system."

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

387978

CA.CA.02160

Proposed Committee Substitute by the Committee on Community Affairs

A bill to be entitled

An act relating to education and training opportunities for public employees; amending s. 110.1099, F.S.; providing certain educational opportunities for specified local government employees; amending s. 1009.265, F.S.; authorizing the use of fee waivers for specified local government employees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 110.1099, Florida Statutes, is amended to read:

110.1099 Education and training opportunities for state and local government employees.—

(1) Education and training are an integral component in improving the delivery of services to the public. Recognizing that the application of productivity-enhancing technology and practice demands continuous educational and training opportunities, a state or local government employee may be authorized to receive a voucher or grant, for matriculation fees, to attend work-related courses at public community colleges, public career centers, or public universities. The department may implement ~~the provisions of~~ this section from funds appropriated to the department for this purpose. If ~~In the event~~ insufficient funds are appropriated to the department, each state or local government agency may supplement these funds

to support the training and education needs of its employees from funds appropriated to the agency.

(2) The department, in conjunction with the state and local government agencies, shall request that public universities provide evening and weekend programs for state and local government employees. When evening and weekend training and educational programs are not available, a state or local government ~~an~~ employee may be authorized to take paid time off during his or her regular working hours for training and career development~~, as provided in s. 110.105(1),~~ if such training benefits the employer as determined by that employee's agency head.

(3) A state or local government ~~An~~ employee who exhibits superior aptitude and performance may be authorized by that employee's agency head to take a paid educational leave of absence for up to 1 academic year at a time, for specific approved work-related education and training. That employee must enter into a contract to return to state or local government employment for a period of time equal to the length of the leave of absence or refund salary and benefits paid during his or her educational leave of absence.

(4) As a precondition to approving a state or local government ~~an~~ employee's training request, the state or local government ~~an~~ agency ~~or the judicial branch~~ may require the ~~an~~ employee to enter into an agreement that requires the employee to reimburse the agency ~~or judicial branch~~ for the registration fee or similar expense for any training or training series when the cost of the fee or similar expense exceeds $1,000 if the employee voluntarily terminates employment or is discharged for


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cause from the agency ~~or judicial branch~~ within a specified period of time not to exceed 4 years after the conclusion of the training. This subsection does not apply to any training program that a state or local government ~~an~~ agency ~~or the judicial branch~~ requires an employee to attend. A state or local government ~~An~~ agency ~~or the judicial branch~~ may pay the outstanding balance then due and owing on behalf of a state or local government employee under this subsection in connection with the recruitment and hiring of that ~~such state~~ employee.

(5) As used in this section, the term:

(a) "State employee" means an employee of the executive or judicial branch of state government, except for a person employed by a state university.

(b) "Local government employee" means a full-time employee of a county or municipality who is a law enforcement officer as defined in s. 943.10(1), a correctional officer as defined in s. 943.10(2), a firefighter as defined in s. 633.30(1), or an emergency medical technician or paramedic as defined in s. 401.23.

(6)~~(5)~~ The Department of Management Services, in consultation with the state and local government agencies and, to the extent applicable, with Florida's public community colleges, public career centers, and public universities, shall adopt rules to administer this section.

Section 2. Section 1009.265, Florida Statutes, is amended to read:

1009.265 ~~State employee~~ Fee waivers.—

(1) As a benefit to the employers ~~employer~~ and employees of ~~the~~ state and local government, subject to approval by an

employee's agency head or the equivalent, each state university and community college shall waive tuition and fees for state and local government employees to enroll for up to 6 credit hours of courses per term on a space-available basis.

(2) The Chief Financial Officer, in cooperation with the community colleges and state universities, shall identify and implement ways to ease the administrative burden to community colleges and state universities, including, but not limited to, providing easier access to verify state and local government employment.

(3) From funds appropriated by the Legislature for administrative costs to implement this section, community colleges and state universities shall be reimbursed on a pro rata basis according to the cost assessment data developed by the Department of Education.

(4) The Auditor General shall include a review of the cost assessment data in conjunction with his or her audit responsibilities for community colleges, state universities, and the Department of Education.

(5) As used in ~~For purposes of~~ this section, the term:

(a) "State employee" means an employee ~~employees of the state include employees~~ of the executive, legislative, or ~~and~~ judicial branch ~~branches~~ of state government, except for a person ~~persons~~ employed by a state university.

(b) "Local government employee" means a full-time employee of a county or municipality who is a law enforcement officer as defined in s. 943.10(1), a correctional officer as defined in s. 943.10(2), a firefighter as defined in s. 633.30(1), or an emergency medical technician or paramedic as defined in s.


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401.23.

Section 3. This act shall take effect July 1, 2011.

138652

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Hill) recommended the following:

Senate Amendment

Delete line 94
and insert:
providing easier access to verify state

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 836
INTRODUCER:	Senator Margolis
SUBJECT:	Education and Training Opportunities for Public Employees
DATE:	March 10, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			HE	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill expands education and training opportunities to certain local government employees. Eligible local government employees include law enforcement officers, correctional officers, firefighters, and emergency medical technicians or paramedics as further defined in statute. The bill includes a definition of state employee to include an employee of the executive or judicial branch of state government except for state university employees.

The bill includes certain local government employees as fee waiver beneficiaries.

This bill substantially amends the following sections of the Florida Statutes: 110.1099 and 1009.265.

II. Present Situation:

Education and Training Opportunities for State Employees

The Legislature recognizes that the application of productivity-enhancing technology and practice demands continuous educational and training opportunities. Therefore s. 110.1099, F.S., allows state employees to be authorized to receive a voucher or grant, for matriculation fees, to attend work-related courses at public community colleges, public career centers, or public universities. The Department of Management Services (DMS) may implement s. 110.1099, F.S., by rule and from funds appropriated by the Legislature. State agencies may support the training and education needs of its employees from funds appropriated to the agency.

When evening and weekend training and educational programs are not available, an employee may be authorized to take paid time off during his or her regular working hours for training and career development, as provided in s. 110.105(1), F.S., if such training benefits the employer as determined by that employee's agency head. An employee who exhibits superior aptitude and performance may be authorized by that employee's agency head to take a paid educational leave of absence for up to 1 academic year at a time, for specific approved work-related education and training. That employee must enter into a contract to return to state employment for a period of time equal to the length of the leave of absence or refund salary and benefits paid during his or her educational leave of absence.

An agency or the judicial branch may require an employee to enter into an agreement that requires the employee to reimburse the agency or judicial branch for the registration fee or similar expense for any training or training series when the cost of the fee or similar expense exceeds $1,000 if the employee voluntarily terminates employment or is discharged for cause from the agency or judicial branch within a specified period of time not to exceed 4 years after the conclusion of the training unless attendance was required by the employer.

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The Chief Financial Officer, in cooperation with the community colleges and state universities, identifies and implements ways to ease the administrative burden to community colleges and state universities, including, but not limited to, providing easier access to verify state employment. Currently, colleges and universities are able to verify eligibility for tuition waivers for state employees only utilizing an online web application. This website is maintained by the Department of Financial Services (DFS) and contains only those employees paid through the Bureau of State Payrolls.[3] DFS does not have access to the payroll and/or employee information for the over 2,100 local government entities throughout the state.[4]

From funds appropriated by the Legislature for administrative costs to implement s. 1009.265, F.S., community colleges and state universities shall be reimbursed on a pro rata basis according to the cost assessment data developed by the Department of Education. The Auditor General reviews the cost assessment data in conjunction with his or her audit responsibilities for community colleges, state universities, and the Department of Education. However, the Auditor General has had limited responsibilities under this section as the Legislature has not appropriated moneys under s. 1009.265(4), F.S., in recent years.[5]

[1] Employees of the state include employees of the executive, legislative, and judicial branches of state government, except for persons employed by a state university.
[2] Section 1009.265, F.S.
[3] Department of Financial Services, Bill Analysis for SB 800 (2011) on file with the Senate Committee on Community Affairs.
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III. Effect of Proposed Changes:

Section 1 amends s. s. 110.1099, F.S., to allow local government employees to receive education and training opportunities currently allowed for state employees under s. 110.1099, F.S. The bill defines:

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[6] *See also* s. 11B-35.001, F.A.C.
[7] Section 943.031, F.S.
[8] Section 943.16, F.S.
[9] Section 633.37, F.S.
[10] Section 633.382. F.S.
[11] Section 401.113 and 401.24 F.S.
[12] Op. Att'y Gen. Fla. 2005-02 (2005)
[13] *Id.*
[14] *Id. but see* Op. Att'y Gen. Fla. 82-13 (1983) (prior to passage of s. 110.1099, F.S., finding a tuition payment for the clerk of the court did not serve a public purpose authorized by law).

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Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Financial Services (DFS) estimates that it will cost $220,550 in nonrecurring revenue to implement the amendments to s. 1009.265(2), F.S. According to the DFS, "For the Bureau of State Payrolls (BOSP) part, estimated costs to implement SB 0800 would be 5 employees working a total of 1000 hours at a blended rate of $23.39 per hour or $23,390. This would involve coordinating with over 2,100 local government entities as well as testing the website once it is developed. This would be an enormous project to undertake and could take years to fully implement." In addition, Division of Information Systems (DIS) has provided an estimated total of $197,160 for the costs of implementing s. 1009.265(2), F.S.

The cost to community colleges and universities is a negative indeterminate value. Local government employees would take class space but not pay full tuition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DFS recommends "[r]emoving the 'and local government' language from line 94 will remove DFS's requirement to verify local government employment which can't be done with existing resources because each independent entity has its own personnel system that will not interface with our system."

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.